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SPECIAL COMMITTEE AGAINST APARTHEID

SUMMARY RECORD OF THE 646th MEETING

Held at Headquarters, New York,
on Friday, 1 March 1991, at 10.30 a.m.

Chairman:

Mr. RANA

(Nepal)

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Hearings of legal experts on the situation of human rights in South Africa

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The meeting was called to order at 10.50 a.m.

1. The CHAIRMAN said that the changing conditions in South Africa required careful evaluation and that progress towards negotiations for a united, non-racist and democratic society in South Africa should be closely monitored. In particular, it was necessary to determine whether the South African Government was complying with the General Assembly's 1989 Declaration on Apartheid and its Destructive Consequences in Southern Africa and other resolutions which called upon the South African authorities, inter alia, to repeal all repressive legislation, to implement fully all agreements reached with the African National Congress of South Africa (ANC) and to take effective and impartial action to end recurring violence in the country. Although the statement of President de Klerk at the opening of the South African Parliament in February had raised hopes for progress, it had failed to address a number of issues that were critical to the creation of an appropriate atmosphere for negotiations, such as the release of political prisoners, the return of political exiles without restrictions, freedom of assembly, and the cessation of the practice of detention without trial. In addition, the recent assassination of Mr. Bheki Mlangeni showed that there were forces in South Africa which opposed the process of change and intended to use violent methods to derail it. Under such conditions, the support of the international community was more vital than ever to the efforts of democratic forces in South Africa.

HEARINGS OF LEGAL EXPERTS ON THE SITUATION OF HUMAN RIGHTS IN SOUTH AFRICA

2. Mr. OMAR (Community Law Centre, University of Western Cape at Belville) said that from the viewpoint of ANC, the object of negotiations with the South African regime was not to reform or to compromise with the apartheid system but to dismantle it completely in order to establish a single, unitary, non-racist, non-sexist and democratic South Africa. Although President de Klerk had proposed the convening of a multi-party conference to draw up a new South African constitution, such a constitution would have no legitimacy unless the people of South Africa were involved in its elaboration. Only a constituent assembly which represented the people had the right to draw up a new constitution, but it was evident that the Government was not agreeable to the establishment of such an assembly.

3. The South African Government had not eliminated the obstacles which stood in the way of negotiations, nor had it created a climate for free political activity. The recent assassination of Mr. Mlangeni further substantiated the abundant evidence that police and army "hit squads" financed by the Government, continued to operate in South Africa. Approximately 2,700 political prisoners remained incarcerated throughout the country, while political exiles were still unable to return to South Africa despite the Government's agreements with ANC. The infamous Internal Security Act, which provided, inter alia, for detention without trial, was still in effect. The chronic violence within the South African black community had been misrepresented, since there was evidence that it had been instigated by the security forces. The responsibility for the country's violence, instability and lack of free political activity clearly lay with the apartheid regime, which sought

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(Mr. Omar)

to retain total control over the negotiation process, as was shown by its rejection of the establishment of an interim government. By maintaining a monopoly of political power, it ensured that the recent legislative changes it had introduced were not irreversible. That strategy was also revealed by President de Klerk's recent announcement that the results of the negotiations would be subject to a referendum among the white electorate. The regime was using the negotiation process to demobilize the struggle of the South African people and to alter the balance of forces so that it would be in a position to impose on South Africa a constitution that would perpetuate existing inequalities. To date, the regime had done little to fulfil its announced intentions, and it was therefore essential for the international community to continue to exert pressure to bring about real and lasting change in South Africa.

4. Mr. SKWEYIYA (Legal and Constitutional Department, African National Congress of South Africa) said that the proposals of the South African Government's National Party, which consisted of vague statements heralding the end of apartheid and the elaboration of a new constitution, showed that it did not share the South African people's goal of dismantling the apartheid system. To date, its proposals for a new constitution called for devolution of authority, decentralization of power to the regional and local levels, a possible bicameral parliament, a bill of rights and an independent judiciary.

5. In the proposed bicameral parliament, all decisions would have to be taken by consensus or a loaded majority, and any law passed by both houses could be vetoed by minority groups. The proposed devolution of authority and decentralization would strip the central Government of effective powers and would make the Parliament unable to carry out its development programmes at the regional and local levels. The proposed bill of rights was designed to protect the white minority's interests and privileges by providing not only for freedom of association, but also for freedom of exclusion. In the context of the regime's current efforts to privatize the economy, particularly in the areas of housing, education and health, such a bill of rights would give groups which controlled property, facilities and amenities the right to exclude others. Finally, the proposal for a strong judiciary to protect the bill of rights would only safeguard the existing privileges of the white minority, since the legal profession in South Africa was dominated by whites.

6. Thus, the regime's proposals for a new constitution would result in: a weak parliament unable to effect change; the entrenchment of the economic and other privileges and interests of the white minority; the institutionalization of privatized apartheid and the maintenance of existing inequalities; and a judiciary that would defend those arrangements. Clearly, the proposals were an attempt to secure white privileges while appearing to concede some power to the black community. For example, under the regime's proposal for strong local government units which would control their own schools, police and other municipal services, the white minority, in running its own local affairs, would command resources from a disproportionately wealthy tax base that would enable it to maintain a separate and privileged way of life. Underlying all of the National Party's proposals was

(Mr. Skweyiya)

the desire to effect a transition from racial to class power, or rather to produce a hybrid of the two. The proposals failed completely to address the fundamental issues of the redistribution of wealth and resources.

7. In order to achieve the goal of completely dismantling apartheid, ANC called for the unification of all democratic forces in South Africa in a patriotic front, which would call for the establishment of an interim government and a constituent assembly to draw up a new constitution. The establishment of an interim government would ensure equality between the negotiating partners, while the establishment of a constituent assembly would ensure the participation of all South Africans. It was suspected that some of the new political parties which had emerged in the past 18 months had been encouraged by the apartheid regime as a means of improving its position in the multi-party conference it had proposed. It was important that the international community should understand that such tactics were machinations used by the regime to legitimize itself in the eyes of the world and to present the appearance of change while human rights violations continued and apartheid remained intact. He hoped that the United Nations would continue to support the forces for democracy in South Africa until their goal was achieved.

8. Mr. MAVUNDLA (Legal Directorate, Pan Africanist Congress of Azania (PAC)) said that the dismantling of apartheid was inseparable from the redistribution of land in South Africa. Even before the National Party's accession to power in 1948, the majority of South Africans had been deprived of their land under a policy which had anticipated the formal establishment of apartheid. Unless the transfer of land to its rightful owners was an integral part of the process of dismantling apartheid, the conflict in South Africa would continue.

9. Following its introduction of the apartheid system, the National Party had taken various measures to maintain the white minority in power. The judiciary, dominated by whites, had interpreted all laws in a manner which favoured minority interests. The Government's recent proposal for a bill of rights did not address the essential issue of the transfer of power. A bill of rights would not effectively protect the rights of every citizen until the system of one man one vote was established for all the people of South Africa.

10. The current composition of the South African judiciary and the Government's proposals regarding a bill of rights and other reforms were examples of the means by which the regime sought to perpetuate the division of the South African population. Before the liberation movements could participate in negotiations for a new constitution, they must form a united patriotic front so that they would be in a position to call for the establishment of a constituent assembly, the redistribution of wealth and the restoration of land to its rightful owners. Political equality was inseparable from economic equality in South Africa, and there would be no peace in the region until economic issues were addressed in the context of dismantling apartheid. He hoped that the United Nations would continue its efforts in support of that process.

11. Mr. LANGA (National Association of Democratic Lawyers) said that the repressive legislation still in effect in South Africa, and in particular the security legislation, was one of the chief obstacles to the success of the current negotiations. It was under that legislation that the inhuman treatment perpetrated by the regime had been carried out - detention without trial, torture, political trials, and long-term prison sentences meted out for opposition to the unjust system prevailing in South Africa.

12. One of the main instruments of repression had been the Public Safety Act, which enabled the Government to declare a state of emergency in "unrest areas". To date there had been no movement by the Government to dismantle its repressive apparatus; at the end of January 1991, 243 political trials were still in progress and there were at present about 150 detainees held under section 29 of the Act, which allowed detention without trial. That was why there had been agitation for repeal of that legislation. The Government had refused to repeal it because it needed the activities sanctioned under that legislation in order to maintain control of the country. It was, however, those activities themselves which were creating a climate of unrest and violence in South Africa stifling the free expression of opinion and giving encouragement to right-wing vigilante groups. The international community must understand the situation and demand the repeal of the legislation in question.

13. Mr. BUDLENDER (Legal Resources Centre) said he wished to draw attention to the situation with respect to social and economic rights in South Africa. Under a scale worked out by social scientists, South Africa had the highest coefficient of social and economic inequality of all the countries in the world for which data were available. That was a direct result not only of decades of institutionalized and legally enforced apartheid but of the centuries of dispossession which had preceded it.

14. Land ownership was a good measure of the degree of that dispossession. The African people had been prevented by law from owning 87 per cent of the country's land, and they owned only a small part of the remaining 13 per cent. The policy of apartheid had been conceived and enforced as a means of dispossessing the African majority. Until recently the Government's position had been that all Africans belonged in bantustans. During the 1980s, the Pass Laws had been used to serve the same end, so that probably half the black population of South Africa's cities was there illegally. That situation had served as a justification for the failure of the Government to build housing for the African population, and it was one of the reasons for the over-crowding of such townships as Soweto and the fact that 8 million of the country's Africans were without adequate housing.

15. The repeal of the apartheid laws alone would not change that situation. Those laws were like the scaffolding of a structure: now that the structure had been built, they could be removed and the edifice would remain. It was not enough to abolish the apartheid laws, although that was a necessary first step. It was necessary also to ensure the destruction of apartheid in reality. A bill of rights was needed, but a bill of rights which did not deal with South Africa's social and economic inequalities would simply perpetuate apartheid.

16. Mr. CURRIN (Lawyers for Human Rights) drew attention to the "hit squads" which continued to operate with apparent impunity in South Africa, as witnessed by the recent assassination of Mr. Mlangeni. Such squads had murdered over 100 political activists in South Africa and carried out many more bombings and assaults. The fact that South Africa's powerful and capable security forces had never solved any of those murders spoke for itself. It was clear to him that there was a third force operating within the security service whose aims were opposed to the current Government's policy. As long as that situation continued it could not be said that the present process of change was irreversible.

17. The Internal Security Act still in force must be held ultimately responsible for the existence of the "hit squads", because it had given birth to a police culture which continued to operate without change. As long as that law remained in effect human rights organizations in South Africa would continue to question the Government's commitment to human rights.

18. Mr. MOLOTO (Black Lawyers' Association) said that previous speakers had referred to the imperative need for a constituent assembly. He would add only that virtually all African organizations in South Africa were agreed on that demand.

19. He wished to focus on some specific recent developments in South Africa in an effort to dispel the mistaken belief within the international community that all was going well in his country. On 1 February 1991, the Government had announced the repeal of four pieces of legislation, the Group Areas Act, the Land Acts, the Population Registration Act and the Black Communities Development Act. As had been pointed out by previous speakers, however, title to the 13 per cent of the country's land that could be owned by Africans was in fact held by the heads of Government or chief ministers of the homelands. The repeal of the Land Acts opened up the possibility that land occupied by blacks could now be sold, even without their knowledge, while the repeal of the Black Communities Act deprived the black community of whatever statutory protection it had previously enjoyed. The repeal of the Group Areas Act actually offered no relief for the black community because it left most blacks living in the squalid areas they had occupied previously, and unless their social and economic rights were restored they would remain financially unable to live elsewhere. Lastly, although the Population Registration Act had been repealed, the referendum that was supposed to establish the acceptability of the new constitution would still be administered by the Government in terms of that Act. It was thus clear that all the Government's recent actions were a fraudulent attempt to persuade international opinion that the situation in South Africa had changed while the real position of blacks in the country remained unaltered.

20. The CHAIRMAN invited the Committee to comment on and put questions in connection with the statements just delivered. In particular, it would be of interest to consider whether initiatives could be undertaken that would ensure the repeal of the Land Acts without leading to greater inequalities; how human rights could best be protected in a new South Africa; and what role the international community, particularly the Secretary-General and the Special Committee, might play during the future negotiations.

21. Mr. MOLOTO (Black Lawyers' Association) said that there was a need for a credible and legitimate interim authority representative of the population as a whole in order to deal with issues relating to the denial of land to the black population. Repeal of apartheid legislation would not suffice; positive measures would be required to protect the dispossessed and redress past wrongs. The question of a new constitution was not an immediate issue. The Government was seeking to make it so in an effort to reaffirm the existing pattern of white wealth and black poverty. Until the imbalance in the distribution of the means of production was rectified, attempts to introduce a new constitution were premature.
22. Mr. BUDLENDER (Legal Resources Centre) said that a number of practical steps could be taken if the Government was determined to ensure fair access by all South Africans to land. In particular, since many had been prevented under the legal system from acquiring formal rights to land, existing rights of usage must be protected. There was also a need for restoration in the case of victims of forced removals, whose land had in effect been stolen. Conflicting claims to land frequently arose, especially in several areas, where many had been compelled to become tenants. Procedures must be established to protect the rights of the dispossessed, perhaps by setting up a land claims court. The right to land and housing must be recognized in the constitution, which should provide for a balance between existing property rights and the fundamental needs of the population.
23. Mr. OMAR (Community Law Centre, University of Western Cape at Belville) said that the international community must maintain sanctions against the apartheid regime, notwithstanding the sentiment in some quarters that the President of South Africa should be rewarded, since the lifting of sanctions would benefit all elements of the apartheid regime. The demand for a constituent assembly in South Africa should be fully supported. The view held by some outside the country that a multi-party conference could prepare a new constitution was unacceptable to the liberation movements. The first step towards democracy must be to involve the people by allowing their elected representatives to prepare a new constitution in a constituent assembly, which would also need to consider such questions as the transfer of power. Given the doubts concerning the willingness of the National Party to implement such changes, an interim government should be established to oversee the process of change and ensure that all parties could compete fairly.
24. The question of the redistribution of land and wealth was vital in view of the inequalities which had arisen under the apartheid system. Support from the international community was essential if that crucial step towards democracy was to be taken.
25. Mr. SKWEYIYA (Legal and Constitutional Department, African National Congress of South Africa) said that for some 350 years the whites had ensured that they had the best land in South Africa. Land reform - long demanded by ANC - was thus essential to the democratization of South Africa. Further to its 1987 Constitutional Guidelines, ANC had circulated a draft bill of rights, in order to canvass the views of all South Africans. The constitution of the post-apartheid South Africa must ensure the enjoyment of human rights - to which land reform was central - by all, irrespective of race, class or sex. Negotiation of those issues

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was an essential part of the struggle of the South African people, and a means of compelling the regime to accept democratization.

26. The protection of human rights would necessitate an independent judiciary and a bill of rights enforceable by law. A problem arose in that most members of the judiciary were white, and a constitutional court would need to be established to safeguard the democratic process. The international community, which had played such a prominent role in opposing apartheid, must now support those developments. The call for a constituent assembly and an interim government must be heeded without delay, since it was obvious that the current regime could not be trusted.

27. Mr. DANKWA (Ghana) said that a distinction must be drawn between the law and its effects. Specifically, it was clear that repeal of certain pieces of legislation would not quickly eradicate the effects of apartheid. It might thus be preferable to concentrate on winning political power and focus on the constituent assembly rather than on specific issues such as the redistribution of land.

28. Mr. OMAR (Community Law Centre, University of Western Cape at Belville) said that even though it seemed that the constitutional proposals introduced by the National Party were democratic, their effect would be to entrench inequalities. The aim must be to adopt a constitution which would rid South Africa of past inequities and ensure a social and economic transformation by transferring power to the people. The international community should ensure that international vested interests did not assist the National Party in perpetuating inequalities.

29. Mr. MOLOTO (Black Lawyers' Association) said that the essential need was for a government in South Africa with the power to redress past wrongs, which meant convening a constituent assembly representing the entire population of the country. A multi-party conference, as suggested by the current Government, would not meet that requirement, since the Government would in effect be player, judge and executive. After three and a half centuries of oppression, the Government simply could not be trusted. Without a representative government, constitutional reform was not possible, since it would merely reinforce the status quo, namely white wealth versus black poverty.

The meeting rose at 12.50 p.m.